

UNITED STATES OF AMERICA  
NATIONAL LABOR RELATIONS BOARD

PINNACLE FOODS GROUP, LLC, and its	)	
successor, CONAGRA BRANDS, INC.,	)	
	)	
Employer,	)	
	)	Case Nos. 14-RD-226626
and	)	
	)	
LOCAL 881 UNITED FOOD AND	)	
COMMERCIAL WORKERS,	)	
	)	
Union,	)	
	)	
and	)	
	)	
ROBERT GENTRY,	)	
	)	
Petitioner.	)	

**LOCAL 881 UNITED FOOD AND COMMERCIAL WORKERS'S  
STATEMENT IN OPPOSITION TO  
PETITIONER'S REQUEST FOR REVIEW**

NOW COMES Local 881 United Food and Commercial Workers ("Local 881" or "Union"), by its attorneys, and hereby submits its Statement in Opposition to Petitioner, Robert Gentry's ("Gentry") Request for Review, and states as follows:

**FACTUAL BACKGROUND**

On August 28, 2018, Gentry filed a decertification petition in case number 14-RD-226626. On September 7, 2018, the Union filed a charge in Case No. 14-CA-226922 against Pinnacle Foods Group, LLC, ("Pinnacle"). In addition to other unfair labor practices, the charge alleged:

"In the last six (6) months, the Employer has bargained in bad faith in negotiations for a first collective bargaining agreement."

Thereafter, on September 7, 2018, the Regional Director issued an order placing the RD case in abeyance and canceled the hearing that was scheduled for September 10, 2018. On September 21, 2018, the Petitioner filed its request for review of the Regional Director's order.

On October 5, 2018, the Union filed a second charge alleging that Pinnacle violated the Act by taking unilateral action by changing the employees' schedules and hours without first bargaining with the Union to impasse. Two weeks later Pinnacle filed a request for review of the Regional Director's September 7 order. Thereafter, following a 3-month investigation by the Region, the Union amended its charge in Case No.14-CA-226922, alleging that:

In the last six months, the Employer has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining unit by refusing to make itself available to meet on reasonable dates and by refusing to provide sufficient time on the days the parties do meet.

The Region, after finding substantial evidence supporting the Union's charges, consolidated Case Nos. 14-CA-226922 and 14-CA-228742 and issued a Consolidated Complaint against Pinnacle. Thereafter, on February 22, 2019, the Region issued an Amended Consolidated Complaint ("Amended Complaint") to include Conagra Brands, Inc, ("Conagra" or "Respondent") as the successor employer. (A true and correct copy of the Amended Consolidated Complaint is attached hereto as Exhibit A).

The Amended Complaint alleges that Conagra violated the Act by failing to bargain in good faith since about March 7, 2018 through October 24, 2018, and by failing to bargain with the Union to an overall good-faith impasse when it took unilateral action in September 2018. One of the remedies sought in the Consolidated Complaint was a 7-month certification year extension as required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962).

On March 25, 2019, the Union and Pinnacle executed a Board-Approved Settlement Agreement resolving the charges in Case Nos. 14-CA-226922 and 14-CA-22847. (A true and

correct copy of the Settlement Agreement is attached hereto as Exhibit B) As a condition of withdrawing the Complaint, the Parties agreed to a *Mar-Jac* remedy, whereby the certification year would be extended by seven months to reflect the time Pinnacle did not bargain in good-faith (*Id.*). The *Mar-Jac* clause of the settlement stated:

**EXTENSION OF CERTIFICATION YEAR:** - The [Employer] agrees that, pursuant to *Mar-Jac Poultry Co.*, 136 NLRB 85 (1962), the certification year in Case 14-RC-183775 will be extended for a period of seven months, commencing upon approval of this settlement agreement. During this seven month period, the [Employer] agrees to bargain in good faith with the [Union] for an initial collective-bargaining agreement and acknowledges that the Board will dismiss any representation petitions concerning this bargaining unit filed through the end of the extended certification year.

Following the execution of the Settlement Agreement, the Regional Director dismissed Petitioner's decertification petition because the *Mar-Jac* remedy rendered the petition as untimely. (A true and correct copy of the Decision to Dismiss is attached hereto as Exhibit C). In support of the Decision to Dismiss, the Regional Director cited the *Mar-Jac* clause of the Settlement Agreement, and stated the following:

Based on the foregoing, the seventh-month extension of the certification period is effective as of March 25, 2019. The Board has long held that "... the certification year will be extended 'to embrace that time in which the employer has engaged in its unlawful refusal to bargain.'" *Mammoth California*, 253 NLRB 1168, 1169 (1981), citing *Pride Refining, Inc.*, 224 NLRB 1353, 1354-55 (1976). The Employer's conduct subject to the settlement agreement noted above commenced on or about March 7, 2018. The instant petition, filed on August 31, 2018, was filed during the extended certification that "embrace[s] that time in which the employer had engaged in its unlawful refusal to bargain," and, by operation of law, must be dismissed.

(Ex. C, p. 2). Thereafter, on May 27, 2019, Petitioner filed his Request for Review of the Regional Director's decision to dismiss the petition.

## LEGAL ANALYSIS

Petitioner raises the following issues in his Request for Review:

1. Did the Regional Director error when he dismissed Petitioner's Decertification Petition;  
and
2. Should *Mar-Jac* extensions be limited or overruled.

The Union respectfully requests that the Board deny the Request for Review in its entirety for the following reasons:

1. **Dismissal of the Decertification Petition Was Proper.**

The Regional Director did not error when he dismissed Petitioner's decertification petition. First, Petitioner's reliance on *Truserv Corp.*, 349 NLRB 227, 232-33 (2007) and *Cablevision Systems Corp.*, 367 NLRB No. 59 (2019) is not relevant to the facts at hand. In *Truserv*, the regional director dismissed the petitioner's decertification petition because the employer agreed to recognize the union in exchange for the union withdrawing Section 8(a)(1) and 8(a)(5) charges. In reversing the Regional Director's decision, the Board held:

Thus, an employer's agreement to resolve outstanding unfair labor practice charges and complaints by recognizing and bargaining with the union, or by entering into a collective-bargaining agreement, will not require dismissal of a decertification petition challenging the union's majority status filed after the alleged unlawful conduct but prior to settlement . . . Therefore, there is no basis to for finding that the decertification petition has been *tainted by unlawful conduct*.

*Truserv Corp.*, 349 NLRB 227, 232-33 (2007) (emphasis added).

Additionally, in *Cablevision*, following a settlement agreement between the union and the employer, the Regional Director dismissed the petitioner's decertification petition because he found there was a causal relationship between the employer's alleged conduct and employee

disaffection.<sup>1</sup> *Cablevision Systems Corp.*, 367 NLRB No. 59 (2019). In reversing the Regional Director's decision, the Board held that the settlement agreement could not be used to prove the employer's actions caused employee disaffection without an admission of fault. *Id.* Common to both *Truserv* and *Cablevision* is that the respective regional directors dismissed the decertification petitions because their belief the alleged 8(a)(5) violations caused employee disaffection. That is not the case in this matter.

In this matter, the Regional Director dismissed the decertification petition because the *Mar-Jac* remedy rendered the petition untimely. Unlike a *Master Slack Corp.*, 271 NLRB 78 (1984) analysis, where evidence of a "causal nexus" between an employer's unfair labor practices and employee disaffection is relevant, a *Mar-Jac* remedy is an operation of law/equitable remedy applied to cure bad-faith bargaining irrespective of employee disaffection. *In re Mammoth of Calif., Inc.*, 253 NLRB 1168 (1981) ("with the extension of the certification year, by operation of law the Union was free from challenge to its majority status during the extended certification year"). Moreover, the Board listed which factors are relevant when applying a *Mar-Jac* remedy, and none of the factors concern testimony regarding employee disaffection. *American Medical Response*, 346 NLRB 1004, 1005 (2006) ("[i]n determining the length of any extension, the Board considers the nature of the violations; the number, extent, and dates of the collective-bargaining sessions; the impact of the unfair labor practices on the bargaining process; and the conduct of the union during negotiations").

Petitioner's request for review attempts to characterize the Regional Director's decision as something it is not. The Settlement Agreement does not concern allegations of employee disaffection, nor was the Regional Director's decision based upon the assumption of employee

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<sup>1</sup> The regional director in *Cablevision* relied on *MasterSlack*, to justify his dismissal of the decertification petition. *Cablevision Systems Corp.*, 367 NLRB No. 59 (2019).

disaffection. Instead, the Board-Approved Settlement Agreement between the Union and Employer specifically agreed to a *Mar-Jac* remedy and the Regional Director based his decision to dismiss upon the fact that the decertification petition was rendered untimely, a decision that is well supported by Board law. *In re Mammoth of Calif., Inc.*, 253 NLRB 1168 (1981); *Pride Refining, Inc.*, 224 NLRB 1353, 1354-55 (1976). Accordingly, the Board should deny Petitioner's Request for Review and affirm the Regional Director's decision to dismiss the decertification petition.

**2. Altering Mar-Jac Extensions Would Subvert the Intended Purpose of the Certification Bar.**

Petitioner's Request for Review requests that the Board remove or alter the *Mar-Jac* extension rule. Alternatively, Petitioner requests that the Board require a hearing is held to determine the source of employee disaffection before dismissing a decertification petition that a *Mar-Jac* extension has rendered untimely. Simply put, Petitioner's requests are unwarranted and contrary to well-established Board law.

**a. The Case Law Petitioner Relies on Is Irrelevant to This Matter.**

First, Petitioner's reliance on *Buck Creek Coal*, 310 NLRB 1240, 1240 (1993), is irrelevant to this matter. In *Buck Creek Coal*, the Board held that the single 8(a)(5) violation did not have an impact on the bargaining process. *Buck Creek Coal*, 310 NLRB at 1240. The Board did not consider evidence of employee disaffection, and only considered the actions of the employer and the overall bargaining history. *Id.* These factors are irrelevant to the Regional Director's Decision to Dismiss and do not support Petitioner's contention that evidence of employee disaffection needs to be considered when assessing the reasonableness of a *Mar-Jac* extension.

Second, Petitioner's reliance on *Cortland Transit Inc.*, 324 NLRB 372, 372 (1997), is even more remote to the facts at hand than *Buck Creek Coal*. In *Cortland Transit*, the Board held that a

Mar-Jac extension was inappropriate where there were no allegations of bad faith bargaining. *Cortland Transit Inc.*, 324 NLRB at 372. Again, the Board did not consider evidence of employee disaffection, or any other factors besides what the complaint and motion for summary judgment alleged. *Id.* It is undisputed that if bad faith bargaining is not properly alleged then a *Mar-Jac* remedy is inappropriate. However, in this case, bad faith bargaining was properly alleged. Accordingly, *Cortland Transit* does not support Petitioner's argument that *Mar-Jac* extensions should be altered.

Finally, Petitioner misconstrues the Board's decision in *Metta Elec. IBEW Local No. 1*, 349 NLRB 1088, 1089 n.6 (2007). In *Metta*, the Board held that a 12-month *Mar-Jac* extension did not reflect the actual time the employer did not bargain in good faith, and decided on a 6-month *Mar-Jac* extension instead. *Metta Elec.*, 349 NLRB at 1089 n.6. The limitations regarding the length of a *Mar-Jac* extension is undisputed, and the Settlement Agreement in this case reflects those limitations, as the agreed *Mar-Jac* extension was only 7 months, the amount of time Employer engaged in dilatory bad faith bargaining.<sup>2</sup> However, no reasonable interpretation of *Metta* supports Petitioner's contention that the Board considers evidence of employee disaffection when applying a *Mar-Jac* remedy. Indeed, the Board in *Metta* – as in every case where the reasonableness of a *Mar-Jac* remedy is considered – only considered how long the employer engaged in bad faith bargaining, and extended the certification year for that same amount of time. *Metta Elec.*, 349 NLRB at 1089 n.6 (citing *Wells Fargo Armored Services Corp.*, 322 NLRB 616, 617 (1996)).

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<sup>2</sup> Petitioner's unsupported assertion that the Union and the Employer in this case "had plenty of time" to bargain for a contract, is simply not true, and refuted by the fact that the Employer agreed to the 7-month extension of the certification year. If, as Petitioner suggests, the Employer and the Union had plenty of time to bargain, then surely the Employer would not have signed the Settlement Agreement with the 7-month certification year extension.

**b. Petitioner's Proposed Procedural Changes Would Subvert the Purpose of the Certification Bar.**

*Mar-Jac* extensions should not be overruled or altered. While the Act is designed to protect the rights of employees, it is also designed to protect the rights and duties of unions designated to represent those employees during the certification year. In this respect, the Board has identified two primary purposes for the certification bar:

to give a union 'ample time for carrying out its mandate on behalf of its members [without] be[ing] under exigent pressures to produce hothouse results or be turned out'" and second, "to deter an employer from violating its duty to bargain: 'It is scarcely conducive to bargaining in good faith for an employer to know that, if he dillydallies or subtly undermines, union strength may erode and thereby relieve him of his statutory duties at any time. . . .'"

*Chelsea Industries*, 331 NLRB 1648 (2000) (quoting *Brooks v. NLRB*, 348 U.S. 96 (1954)). *Mar-Jac* extensions are the only equitable remedy able cure an employer's bad faith bargaining during the certification year, and Board has continuously applied *Mar-Jac* extensions in recognition of that fact. (*XPO Logistics Freight, Inc.*, 367 N.L.R.B. No. 120 (2019) (ordering a *Mar-Jac* extension); *Audio Visual Services Group, Inc., d/b/a PSAV Presentation Services*, 367 N.L.R.B. No. 103 (2019) (ordering a *Mar-Jac* extension); *GTS Ambulance Transportation, LLC*, 367 N.L.R.B. No. 82 (2019) (ordering a *Mar-Jac* extension).

Additionally, a hearing designed to consider employee disaffection ("disaffection hearing") would conflict with the two purposes of the certification bar. First, a disaffection hearing would give employers the opportunity to capitalize on its stalling and delaying tactics. Employers would only be incentivized to cause disaffection through dilatory, bad faith bargaining because the same coerced employees could then testify to prevent the only remedy to the bad faith bargaining. Indeed, the Board considered as much when it established the *Mar-Jac* extension:

[a]mong the reason supporting the adoption of this rule is to give the certified union ample time for carrying out its mandate and to prevent an employer from knowing that if he dillydallies or subtly undermines union strength, he may erode that strength and relieve himself of his duty to bargain.

*Mar-Jac Poultry Co.*, 136 N.L.R.B. 785 (1967).

Second, altering *Mar-Jac* extensions or requiring a disaffection hearing before dismissing a decertification would only serve to subvert the first purpose of the certification bar. Simply put, altering *Mar-Jac* or requiring a hearing would not grant unions the necessary time to bargain. The employees freely elected the Union, and a hearing regarding employee disaffection, from the same employees the employer coerced, does not “give a union ‘ample time for carrying out its mandate on behalf of its members [without] be[ing] under exigent pressures to produce hothouse results or be turned out.” *Chelsea Industries*, 331 NLRB at 1650.

The Board’s current *Mar-Jac* extension procedures strikes the perfect balance between allowing a Union to bargain on behalf of the employees, and protecting the employees’ Section 7 rights. Again, the employees freely elected the Union, and they can freely vote to decertify the Union after a *Mar-Jac* extension period is complete, and out of the shadow of the employer’s bad faith bargaining. *GTS Ambulance Transportation, LLC*, 367 N.L.R.B. No. 82 (2019) (“Finally, to ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning on the date the Respondent begins to bargain in good faith with the Union”); *United Electrical Contractors Ass’n*, 347 NLRB 1, 4-5 (2006) (“Given the time period involved, we believe that employees should be given that Section 7 right after a reasonable period of time during which the effects of the [bad faith bargaining] can be remedied. Thus, for this reasonable time period, the Union will be secured against decertification efforts and rival petitions. Under these circumstances, we find a full-year *Mar-Jac* remedy in this case unwarranted); see also Judge

Goldman order in *Latino Express*, attached hereto as Exhibit D) (“If the employees don’t like [the union], they can decertify the union once the union has been given that lawful chance to represent the employees as the employees originally sought to have a union do. That’s the balancing between free choice and industrial stability that the Board has drawn”). Moreover, Petitioner cannot credibly claim that the current *Mar-Jac* remedy does not sufficiently protect the rights of the employees. Indeed, when applying a *Mar-Jac* extension the Board stated:

In assessing the appropriate remedy in these situations, it is necessary to "take into account the realities of collective bargaining negotiations by providing a reasonable period of time in which the Union and the Respondent can resume negotiations and bargain for a contract without *unduly saddling the employees with a bargaining representative that they may no longer wish to have represent them*.

*Tubari, Ltd., Inc.*, 299 NLRB 1223, 1233 (1990) (emphasis added). By limiting the length of *Mar-Jac* extensions to the correspond with the employer’s bad faith bargaining, the Board has already alleviated Petitioner’s concerns for the rights of employees. This practice has continuously been applied by the Board, and has not proven to be unworkable or unfair to employees. *Covanta Energy Corporation*, 356 NLRB 706, 731 (2011) (limiting *Mar-Jac* extension to six months); *United Electrical Contractors Ass’n*, 347 NLRB 1 (2006) (holding that full-year extension was unwarranted given bargaining history); *Federal Pacific Electric Co.*, 215 NLRB 861 (granting *Mar-Jac* extension for 3-1/2 months).

In the end, by altering the Board’s current *Mar-Jac* extension policies or requiring a disaffection hearing prior to dismissing a decertification petition, the Board would gift employers with a powerful tool to remove unions that their employees freely elected. This would not facilitate the industrial peace desired by the Act, and only serve to create mistrust and hostility between unions and employers during the certification year. Accordingly, Petitioner’s second issue presented should be denied.

### CONCLUSION

For all of the reasons argued herein, Local 881 UFCW respectfully requests that the Board dismiss Petitioner's Request for Review in its entirety.

Respectfully Submitted,

/s/ Joseph C. Torres  
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Attorney for Local 881 UFCW

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### CERTIFICATE OF SERVICE

I hereby certify that on May 17, 2019, a true and correct copy of the foregoing Statement in Opposition was served by electronic filing on the NLRB's Executive Secretary and that the following individuals were served the Statement in Opposition via Email:

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# EXHIBIT A

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 14**

**PINNACLE FOODS GROUP, LLC and its  
successor CONAGRA BRANDS, INC.**

**and**

**Cases 14-CA-226922  
14-CA-228742**

**LOCAL 881 UNITED FOOD AND  
COMMERCIAL WORKERS**

**AMENDED CONSOLIDATED  
COMPLAINT AND NOTICE OF HEARING**

Based upon charges filed by Local 881 United Food and Commercial Workers (Union), in Cases 14-CA-226922 and 14-CA-228742, on November 29, 2018, an Order Consolidating Cases, Consolidated Complaint and Notice of Hearing issued against Pinnacle Foods Group, LLC (Respondent Pinnacle), alleging that it violated the National Labor Relations Act (Act), 29 U.S.C. § 151 et seq., by engaging in unfair labor practices. On December 27, 2018, an Order Rescheduling Hearing issued, rescheduling the hearing to April 9, 2019, at 10:00 AM. This Amended Complaint and Notice of Hearing, issued pursuant to Section 10(b) of the Act and Sections 102.15 and 102.17 of the Rules and Regulations of the National Labor Relations Board (the Board), alleges that Respondent Pinnacle and its successor Conagra Brands Inc. (Successor Conagra) (collectively Respondents) have violated the Act as follows:

**1**

A. The charge in Case 14-CA-226922 was filed by the Union on September 7, 2018, and a copy was served on Respondent Pinnacle by U.S. mail on that date.

B. The first amended charge in Case 14-CA-226922 was filed by the Union on November 26, 2018, and a copy was served on Respondent Pinnacle by certified mail on November 29, 2018.

C. The second amended charge in Case 14-CA-226922 was filed by the Union on January 2, 2019, and a copy was served on Respondents by U.S. mail on January 3, 2019.

D. The charge in Case 14-CA-228742 was filed by the Union on October 5, 2018, and a copy was served on Respondent Pinnacle by U.S. mail on October 9, 2018.

E. The first amended charge in Case 14-CA-228742 was filed by the Union on January 2, 2019, and a copy was served on Respondents by U.S. mail on January 3, 2019.

2

A. From March 7, 2018 through October 25, 2018, Respondent Pinnacle had been a limited liability company with an office and place of business in St. Elmo, Illinois (Respondent Pinnacle's facility) and had been engaged in the manufacture and nonretail sale of salad dressings, syrups, and sauces.

B. About October 26, 2018, Conagra Brands, Inc. (Successor Conagra) purchased the business of Pinnacle Foods Group, LLC (Respondent Pinnacle) and since then has continued to operate Respondent Pinnacle's former business in basically unchanged form and has employed as a majority of its employees individuals who were previously employees of Respondent Pinnacle.

C. Based on its operations described above in paragraph 2B, Successor Conagra has continued the employing entity and is a successor to Respondent Pinnacle.

D. Before engaging in the conduct described above in paragraph 2B, Successor Conagra was put on notice of Respondent Pinnacle's potential liability in Board Cases 14-CA-

226922 and 14-CA-228742 through its hiring of Respondent Pinnacle's management and supervisory hierarchy.

E. Based on its operations described above in paragraph 2D, Successor Conagra has continued the employing entity with notice of Respondent Pinnacle's potential liability to remedy its unfair labor practices and is a successor to Respondent Pinnacle.

F. In conducting its operations during the 12-month period ending October 25, 2018, Respondent Pinnacle sold and shipped from its St. Elmo, Illinois facility goods valued in excess of \$50,000 directly to points outside the State of Illinois.

G. In conducting its operations during the 12-month period ending October 25, 2018, Respondent Pinnacle purchased and received goods at Respondent Pinnacle's facility valued in excess of \$50,000 directly from points outside the State of Illinois.

H. Based on a projection of its operations since about October 26, 2018, at which time Successor Conagra purchased the business of Respondent Pinnacle, Successor Conagra will annually sell and ship from its St. Elmo, Illinois facility goods valued in excess of \$50,000 directly to points outside the State of Illinois.

I. Based on a projection of its operations since about October 26, 2018, at which time Successor Conagra purchased the business of Respondent Pinnacle, Successor Conagra will annually purchase and receive goods at its St. Elmo, Illinois facility valued in excess of \$50,000 directly from points outside the State of Illinois.

J. At all material times, Respondent Pinnacle and Successor Conagra have been employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

At all material times, the following individuals held positions set forth opposite their respective names and have been supervisors of Respondent Pinnacle and Successor Conagra, as designated below, within the meaning of Section 2(11) of the Act and agents of Respondent Pinnacle and Successor Conagra, as designated below, within the meaning of Section 2(13) of the Act:

Sean Blankley	-	Plant Manager Respondent Pinnacle and Successor Conagra
LaQuida Booher	-	Human Resources Manager Respondent Pinnacle and Successor Conagra
Dan Hines	-	Director of Labor Relations Successor Conagra
Kelley Maggs	-	Vice President, General Counsel, Secretary Respondent Pinnacle
Uche Ndumule	-	Vice President, General Counsel Respondent Pinnacle
Michael Ryan	-	Human Resources Director Respondent Pinnacle

A. The following employees of Respondents (the Unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time production and maintenance employees including warehouse and distribution employees, sanitation employees, and coordinators employed by the Respondent at its St. Elmo, Illinois facility excluding office clerical employees, office coordinators, temporary employees, professional employees, guards, and supervisors as defined in the Act.

B. On March 7, 2017, the Board certified the Union as the exclusive collective-bargaining representative of the Unit employed by Respondent Pinnacle.

C. From about March 7, 2017, through October 25, 2018, based on Section 9(a) of the Act, the Union had been the exclusive collective-bargaining representative of the Unit employed by Respondent Pinnacle and during that time the Union had been recognized as such representative by Respondent Pinnacle based on the Board's certification described above in paragraph 5A.

D. Since about October 26, 2018, based on the facts described above in paragraphs 2B, 2C, 5A, 5B, and 5C, the Union has been the designated exclusive collective-bargaining representative of the Unit employed by Successor Conagra.

6

A. At various times from about March 7, 2018, through October 24, 2018, Respondent Pinnacle and the Union met for the purposes of negotiating an initial collective-bargaining agreement with respect to wages, hours, and other terms and conditions of employment.

B. During the period described above in paragraph 6A, Respondent Pinnacle has failed and refused to bargain with the Union by not making itself available for bargaining on reasonable dates.

C. During the period described above in paragraph 6A, Respondent Pinnacle has failed and refused to bargain with the Union by not providing sufficient time to bargain during bargaining sessions held.

D. By its conduct described above in paragraphs 6B and 6C, Respondent Pinnacle has failed and refused to bargain in good faith with the Union as the exclusive collective-bargaining representative of the Unit.

7

A. About September 17, 2018, Respondent Pinnacle changed the shifts for Lines 4 and 5 from 12-hour shifts to 8-hour shifts and unilaterally implemented bidding procedures for these new shifts.

B. About September 17, 2018, Respondent Pinnacle established bidding procedures for the new shifts described above in paragraph 7A.

C. The subjects set forth above in paragraph 7A and 7B relate to wages, hours, and other terms and conditions of employment of the Unit and are mandatory subjects for the purposes of collective bargaining.

D. Respondent Pinnacle engaged in the conduct described above in paragraph 7A and 7B without first bargaining with the Union to an overall good-faith impasse.

E. As a result of Respondent Pinnacle's conduct described above in paragraph 7A and 7B, Respondent Pinnacle caused employees to be displaced from Lines 4 and 5.

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By the conduct described above in paragraphs 6 and 7, Respondents have been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees in violation of Section 8(a)(1) and (5) of the Act.

The unfair labor practices of Respondents described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

WHEREFORE, as part of the remedy for Respondents' unfair labor practices alleged above in paragraph 6 and 7 the General Counsel seeks an Order requiring Respondents to bargain in good faith with the Union, on request, for a 7-month period as required by *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), as the recognized bargaining representative in the appropriate unit.

The General Counsel further seeks all other relief as may be just and proper to remedy the unfair labor practices alleged.

#### ANSWER REQUIREMENT

Respondents are notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, they must file an answer to the amended consolidated complaint. The answer must be received by this office on or before March 11, 2109 or postmarked on or before March 9, 2019. Respondents should file an original and four copies of the answer with this office and serve a copy of the answer on each of the other parties.

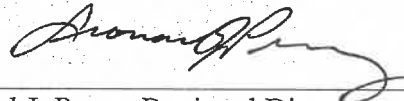
An answer may also be filed electronically through the Agency's website. To file electronically, go to [www.nlr.gov](http://www.nlr.gov), click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt and usability of the answer rests exclusively upon the sender. Unless notification on the Agency's website informs users that the Agency's E-Filing system is officially determined to be in technical failure because it is unable to receive documents for a continuous period of more than 2 hours after 12:00 noon

(Eastern Time) on the due date for filing, a failure to timely file the answer will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off-line or unavailable for some other reason. The Board's Rules and Regulations require that an answer be signed by counsel or non-attorney representative for represented parties or by the party if not represented. See Section 102.21. If the answer being filed electronically is a pdf document containing the required signature, no paper copies of the answer need to be transmitted to the Regional Office. However, if the electronic version of an answer to a complaint is not a pdf file containing the required signature, then the E-filing rules require that such answer containing the required signature continue to be submitted to the Regional Office by traditional means within three (3) business days after the date of electronic filing. Service of the answer on each of the other parties must still be accomplished by means allowed under the Board's Rules and Regulations. The answer may not be filed by facsimile transmission. If no answer is filed, or if an answer is filed untimely, the Board may find, pursuant to a Motion for Default Judgment, that the allegations in the consolidated complaint are true.

#### **NOTICE OF HEARING**

PLEASE TAKE NOTICE THAT on **April 9, 2019, 10:00 a.m.** at **1222 Spruce Street, Room 8.302, Saint Louis, Missouri**, and on consecutive days thereafter until concluded, a hearing will be conducted before an administrative law judge of the National Labor Relations Board. At the hearing, Respondents and any other party to this proceeding have the right to appear and present testimony regarding the allegations in this consolidated complaint. The procedures to be followed at the hearing are described in the attached Form NLRB-4668. The procedure to request a postponement of the hearing is described in the attached Form NLRB-4338.

Dated: February 22, 2019



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Leonard J. Perez, Regional Director  
National Labor Relations Board, Region 14  
1222 Spruce Street, Room 8.302  
Saint Louis, MO 63103-2829

Attachments

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
NOTICE

Case 14-CA-226922

The issuance of the notice of formal hearing in this case does not mean that the matter cannot be disposed of by agreement of the parties. On the contrary, it is the policy of this office to encourage voluntary adjustments. The examiner or attorney assigned to the case will be pleased to receive and to act promptly upon your suggestions or comments to this end.

An agreement between the parties, approved by the Regional Director, would serve to cancel the hearing. However, unless otherwise specifically ordered, the hearing will be held at the date, hour, and place indicated. Postponements **will not be granted** unless good and sufficient grounds are shown **and** the following requirements are met:

- (1) The request must be in writing. An original and two copies must be filed with the Regional Director when appropriate under 29 CFR 102.16(a) or with the Division of Judges when appropriate under 29 CFR 102.16(b).
- (2) Grounds must be set forth in *detail*;
- (3) Alternative dates for any rescheduled hearing must be given;
- (4) The positions of all other parties must be ascertained in advance by the requesting party and set forth in the request; and
- (5) Copies must be simultaneously served on all other parties (listed below), and that fact must be noted on the request.

Except under the most extreme conditions, no request for postponement will be granted during the three days immediately preceding the date of hearing.

Sean Blankley, Plant Manager  
ConAgra Brands, Inc., as a successor to  
Pinnacle Foods Group, LLC  
1000 Brewbaker Dr  
Saint Elmo, IL 62458-1234

James N. Foster Jr., Attorney  
McMahon Berger, P.C.  
2730 North Ballas Road Suite 200  
P.O. Box 31901  
Saint Louis, MO 63131-3039

Daniel H. Hines, Director Labor Relations  
Conagra Foods, Inc.  
Nine ConAgra Drive  
Omaha, NE 68102

Hillary L. Klein, Attorney  
Husch Blackwell LLP  
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Chattanooga, TN 37402

Jonathan D. Karmel, Attorney  
The Karmel Law Firm  
221 N LaSalle St., Ste. 1550  
Chicago, IL 60601-1224

Local 881, United Food and Commercial  
Workers  
1 Sunset Hills Executive Dr., Ste. 102  
Edwardsville, IL 62025-3723

Joseph C. Torres, ESQ.  
The Karmel Law Firm  
221 N. LaSalle St., Ste. 1550  
Chicago, IL 60601-1224

## Procedures in NLRB Unfair Labor Practice Hearings

The attached complaint has scheduled a hearing that will be conducted by an administrative law judge (ALJ) of the National Labor Relations Board who will be an independent, impartial finder of facts and applicable law. **You may be represented at this hearing by an attorney or other representative.** If you are not currently represented by an attorney, and wish to have one represent you at the hearing, you should make such arrangements as soon as possible. A more complete description of the hearing process and the ALJ's role may be found at Sections 102.34, 102.35, and 102.45 of the Board's Rules and Regulations. The Board's Rules and regulations are available at the following link: [www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules\\_and\\_regs\\_part\\_102.pdf](http://www.nlr.gov/sites/default/files/attachments/basic-page/node-1717/rules_and_regs_part_102.pdf).

The NLRB allows you to file certain documents electronically and you are encouraged to do so because it ensures that your government resources are used efficiently. To e-file go to the NLRB's website at [www.nlr.gov](http://www.nlr.gov), click on "e-file documents," enter the 10-digit case number on the complaint (the first number if there is more than one), and follow the prompts. You will receive a confirmation number and an e-mail notification that the documents were successfully filed.

**Although this matter is set for trial, this does not mean that this matter cannot be resolved through a settlement agreement.** The NLRB recognizes that adjustments or settlements consistent with the policies of the National Labor Relations Act reduce government expenditures and promote amity in labor relations and encourages the parties to engage in settlement efforts.

### I. BEFORE THE HEARING

The rules pertaining to the Board's pre-hearing procedures, including rules concerning filing an answer, requesting a postponement, filing other motions, and obtaining subpoenas to compel the attendance of witnesses and production of documents from other parties, may be found at Sections 102.20 through 102.32 of the Board's Rules and Regulations. In addition, you should be aware of the following:

- **Special Needs:** If you or any of the witnesses you wish to have testify at the hearing have special needs and require auxiliary aids to participate in the hearing, you should notify the Regional Director as soon as possible and request the necessary assistance. Assistance will be provided to persons who have handicaps falling within the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, and 29 C.F.R. 100.603.
- **Pre-hearing Conference:** One or more weeks before the hearing, the ALJ may conduct a telephonic prehearing conference with the parties. During the conference, the ALJ will explore whether the case may be settled, discuss the issues to be litigated and any logistical issues related to the hearing, and attempt to resolve or narrow outstanding issues, such as disputes relating to subpoenaed witnesses and documents. This conference is usually not recorded, but during the hearing the ALJ or the parties sometimes refer to discussions at the pre-hearing conference. You do not have to wait until the prehearing conference to meet with the other parties to discuss settling this case or any other issues.

### II. DURING THE HEARING

The rules pertaining to the Board's hearing procedures are found at Sections 102.34 through 102.43 of the Board's Rules and Regulations. Please note in particular the following:

- **Witnesses and Evidence:** At the hearing, you will have the right to call, examine, and cross-examine witnesses and to introduce into the record documents and other evidence.
- **Exhibits:** Each exhibit offered in evidence must be provided in duplicate to the court reporter and a copy of each of each exhibit should be supplied to the ALJ and each party when the exhibit is offered.

**in evidence.** If a copy of any exhibit is not available when the original is received, it will be the responsibility of the party offering such exhibit to submit the copy to the ALJ before the close of hearing. If a copy is not submitted, and the filing has not been waived by the ALJ, any ruling receiving the exhibit may be rescinded and the exhibit rejected.

- **Transcripts:** An official court reporter will make the only official transcript of the proceedings, and all citations in briefs and arguments must refer to the official record. The Board will not certify any transcript other than the official transcript for use in any court litigation. Proposed corrections of the transcript should be submitted, either by way of stipulation or motion, to the ALJ for approval. Everything said at the hearing while the hearing is in session will be recorded by the official reporter unless the ALJ specifically directs off-the-record discussion. If any party wishes to make off-the-record statements, a request to go off the record should be directed to the ALJ.
- **Oral Argument:** You are entitled, on request, to a reasonable period of time at the close of the hearing for oral argument, which shall be included in the transcript of the hearing. Alternatively, the ALJ may ask for oral argument if, at the close of the hearing, if it is believed that such argument would be beneficial to the understanding of the contentions of the parties and the factual issues involved.
- **Date for Filing Post-Hearing Brief:** Before the hearing closes, you may request to file a written brief or proposed findings and conclusions, or both, with the ALJ. The ALJ has the discretion to grant this request and to will set a deadline for filing, up to 35 days.

### III. AFTER THE HEARING

The Rules pertaining to filing post-hearing briefs and the procedures after the ALJ issues a decision are found at Sections 102.42 through 102.48 of the Board's Rules and Regulations. Please note in particular the following:

- **Extension of Time for Filing Brief with the ALJ:** If you need an extension of time to file a post-hearing brief, you must follow Section 102.42 of the Board's Rules and Regulations, which requires you to file a request with the appropriate chief or associate chief administrative law judge, depending on where the trial occurred. You must immediately serve a copy of any request for an extension of time on all other parties and furnish proof of that service with your request. You are encouraged to seek the agreement of the other parties and state their positions in your request.
- **ALJ's Decision:** In due course, the ALJ will prepare and file with the Board a decision in this matter. Upon receipt of this decision, the Board will enter an order transferring the case to the Board and specifying when exceptions are due to the ALJ's decision. The Board will serve copies of that order and the ALJ's decision on all parties.
- **Exceptions to the ALJ's Decision:** The procedure to be followed with respect to appealing all or any part of the ALJ's decision (by filing exceptions with the Board), submitting briefs, requests for oral argument before the Board, and related matters is set forth in the Board's Rules and Regulations, particularly in Section 102.46 and following sections. A summary of the more pertinent of these provisions will be provided to the parties with the order transferring the matter to the Board.

# EXHIBIT B

UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD  
SETTLEMENT AGREEMENT

**IN THE MATTER OF**

**Pinnacle Foods Group, LLC and its successor Conagra Brands, Inc.**

**Cases 14-CA-226922,**

**14-CA-228742**

Subject to the approval of the Regional Director for the National Labor Relations Board, the Charged Party and the Charging Party **HEREBY AGREE TO SETTLE THE ABOVE MATTER AS FOLLOWS:**

**POSTING OF NOTICE** — After the Regional Director has approved this Agreement, the Regional Office will send copies of the approved Notice to the Charged Party in English and in additional languages if the Regional Director decides that it is appropriate to do so. A responsible official of the Charged Party will then sign and date those Notices and immediately post them in prominent places around its facility located at 1000 Brewbaker Drive, St. Elmo, IL 62458. The Charged Party will keep all Notices posted for 60 consecutive days after the initial posting.

**COMPLIANCE WITH NOTICE** — The Charged Party will comply with all the terms and provisions of said Notice.

**NON-ADMISSION CLAUSE** — By entering into this Settlement Agreement, the Charged Party does not admit that it has violated the National Labor Relations Act.

**SCOPE OF THE AGREEMENT** — This Agreement settles only the allegations in the above-captioned case(s), including all allegations covered by the attached Notice to Employees made part of this agreement, and does not settle any other case(s) or matters. It does not prevent persons from filing charges, the General Counsel from prosecuting complaints, or the Board and the courts from finding violations with respect to matters that happened before this Agreement was approved regardless of whether General Counsel knew of those matters or could have easily found them out. The General Counsel reserves the right to use the evidence obtained in the investigation and prosecution of the above-captioned case(s) for any relevant purpose in the litigation of this or any other case(s), and a judge, the Board and the courts may make findings of fact and/or conclusions of law with respect to said evidence. By approving this Agreement the Regional Director withdraws any Complaint(s) and Notice(s) of Hearing previously issued in the above case(s), and the Charged Party withdraws any answer(s) filed in response.

**EXTENSION OF THE CERTIFICATION YEAR** — The Charged Party agrees that, pursuant to *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962), the certification year in case 14-RC-183775 will be extended for a period of seven months, commencing upon approval of this settlement agreement. During this seven month period of time, the Charged Party agrees to bargain in good faith with the Charging Party for an initial collective-bargaining agreement and acknowledges that the Board will dismiss any representation petitions concerning this bargaining unit filed through the end of the extended certification year.

**PARTIES TO THE AGREEMENT** — If the Charging Party fails or refuses to become a party to this Agreement and the Regional Director determines that it will promote the policies of the National Labor Relations Act, the Regional Director may approve the settlement agreement and decline to issue or reissue a Complaint in this matter. If that occurs, this Agreement shall be between the Charged Party and the undersigned Regional Director. In that case, a Charging Party may request review of the decision to approve the Agreement. If the General Counsel does not sustain the Regional Director's approval, this Agreement shall be null and void.

**AUTHORIZATION TO PROVIDE COMPLIANCE INFORMATION AND NOTICES DIRECTLY TO CHARGED PARTY** — Counsel for the Charged Party authorizes the Regional Office to forward the cover letter describing the general expectations and instructions to achieve compliance, a conformed settlement.

51



original notices and a certification of posting directly to the Charged Party. If such authorization is granted, Counsel will be simultaneously served with a courtesy copy of these documents.

Yes JS  
Initials

No \_\_\_\_\_  
Initials

**PERFORMANCE** — Performance by the Charged Party with the terms and provisions of this Agreement shall commence immediately after the Agreement is approved by the Regional Director, or if the Charging Party does not enter into this Agreement, performance shall commence immediately upon receipt by the Charged Party of notice that no review has been requested or that the General Counsel has sustained the Regional Director.

The Charged Party agrees that in case of non-compliance with any of the terms of this Settlement Agreement by the Charged Party, and after 14 days' notice from the Regional Director of the National Labor Relations Board of such non-compliance without remedy by the Charged Party, the Regional Director will reissue the Amended Consolidated Complaint and Notice of Hearing previously issued on February 25, 2019 in the instant case(s).

**NOTIFICATION OF COMPLIANCE** — Each party to this Agreement will notify the Regional Director in writing what steps the Charged Party has taken to comply with the Agreement. This notification shall be given within 5 days, and again after 60 days, from the date of the approval of this Agreement. If the Charging Party does not enter into this Agreement, initial notice shall be given within 5 days after notification from the Regional Director that the Charging Party did not request review or that the General Counsel sustained the Regional Director's approval of this agreement. No further action shall be taken in the above captioned case(s) provided that the Charged Party complies with the terms and conditions of this Settlement Agreement and Notice.

<b>Charged Party</b> Pinnacle Foods Group, LLC and its successor Conagra Brands, Inc.	<b>Charging Party</b> Local 881, United Food and Commercial Workers
By: _____ Name and Title _____ Date 3/22/19	By: _____ Name and Title _____ Date 3/22/19
Print Name and Title below James N. Foster Jr. Att'y for Employer	Print Name and Title below Joseph C. Torres, Attorney For the Union
Recommended By: _____ Date	Approved By: _____ Date
ABBY E. SCHNEIDER Field Attorney	LEONARD J. PEREZ Regional Director, Region 14

JS

JS

(To be printed and posted on official Board notice form)

**FEDERAL LAW GIVES YOU THE RIGHT TO:**

- Form, join, or assist a union;
- Choose a representative to bargain with us on your behalf;
- Act together with other employees for your benefit and protection;
- Choose not to engage in any of these protected activities.

**WE WILL NOT** interfere with, restrain, or coerce you in the exercise of the above rights.

**WE WILL NOT** refuse to bargain in good faith with Local 881, United Food and Commercial Workers ("the Union") as the exclusive collective-bargaining representative of our employees in the following appropriate unit by limiting the frequency and duration of bargaining meetings or unilaterally making changes in wages, hours, and working conditions.

All full-time production and maintenance employees including warehouse and distribution employees, sanitation employees, and coordinators employed by the Employer at its St. Elmo, Illinois facility excluding office clerical employees, office coordinators, temporary employees, professional employees, guards, and supervisors as defined in the Act.

**WE WILL NOT** make changes in wages, hours and working conditions, including implementing new job bid processes and awarding jobs pursuant to new job bid processes, without reaching an overall good faith impasse or agreement with the Union.

**WE WILL**, upon request, bargain in good faith with Local 881, United Food and Commercial Workers as the exclusive collective-bargaining representative of our employees in the above-described appropriate unit, concerning rates of pay, wages, hours of work, and other terms and conditions of employment and, if an understanding is reached, embody such an understanding in a signed agreement.

**WE WOULD HAVE** rescinded any or all changes to your terms and conditions of employment that we made without bargaining with the Union if the Union had so requested, but the Union has chosen to address all changes to terms and conditions of employment in the current bargaining.

**WE HAVE** agreed to an extension of the certification year for seven (7) months, as outlined in the Settlement Agreement

**Pinnacle Foods Group, LLC and its successor  
Conagra Brands, Inc.**

(Employer)

Dated: 3/22/2019

By: [Signature]

(Representative)

Attorney for Employees  
(Title)

---

*The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. We conduct secret-ballot elections to determine whether employees want union representation and we investigate and remedy unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below or you may call the Board's toll-free number 1-844-762-NLRB (1-844-762-6572). Hearing impaired callers who wish to speak to an Agency representative should contact the Federal Relay Service (link is external) by visiting its website at <https://www.federalrelay.us/itv> (link is external), calling one of its toll free numbers and asking its Communications Assistant to call our toll free number at 1-844-762-NLRB.*

**Telephone:**

**Hours of Operation:**

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**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the above Regional Office's Compliance Officer.



# EXHIBIT C



UNITED STATES GOVERNMENT  
NATIONAL LABOR RELATIONS BOARD

REGION 14  
1222 SPRUCE ST  
RM 8.302  
SAINT LOUIS, MO 63103-2829.

Agency Website: [www.nlrb.gov](http://www.nlrb.gov)  
Telephone: (314)539-7770  
Fax: (314)539-7794

April 1, 2019

Glenn M. Taubman, ESQ.  
National Right To Work Legal Defense Foundation  
8001 Braddock Rd., Ste 600  
Springfield, VA 22151-2110

Re: Pinnacle Foods Group, LLC  
Case 14-RD-226626

Dear Mr. Taubman:

The above-captioned petition for the removal of a bargaining representative has been carefully investigated and considered pursuant to Section 9(c) of the National Labor Relations Act (the Act).

**Decision to Dismiss:** As a result of the investigation, I am dismissing the petition for the following reasons:

It is the Board's policy to treat a certification as bargaining representative under Section 9 of the Act with certainty and finality for a period of one year. Based on this policy, the Board has found that petitions filed before the end of the certification year are untimely and shall be dismissed. The Board does this in order to afford an employer and a union full opportunity to arrive at an agreement. The conclusive nature of a newly certified union's unchallenged status is such that it is the Board's policy to administratively dismiss representation petitions filed before the expiration of the 12-month period following a certification, on the basis that "the mere retention on file of such petitions, although unprocessed, cannot but detract from the full import of a Board certification, which should be permitted to run its complete 1-year course before any question of the representative status of the certified union is given formal cognizance by the Board." *United Supermarkets, Inc.*, 287 NLRB 119, 120 (1987), citing *Centre-O-Cast & Engineering Co.*, 100 NLRB 1507, 1508 (1952).

The investigation in this case disclosed that Local 881 United Food and Commercial Workers ("the Union") was certified in Case 14-RC-183775 on March 7, 2017, as the collective-bargaining representative of the unit of employees included in the petition in this matter. This petition was then filed on August 31, 2018. However, after this petition was filed, the Union filed unfair labor practice charges in Cases 14-CA-226922 and 14-CA-228742. Together, these charges alleged that the Employer unlawfully failed and refused to bargain in good faith with the Union with respect to the terms and conditions of employment for an initial collective-bargaining agreement applicable to the unit involved in the instant decertification petition.

On March 25, 2019, I approved a Settlement Agreement between the Union and Pinnacle Foods Group, LLC and its successor Conagra Brands, Inc. ("the Employer") in Cases 14-CA-226922 and 14-CA-228742. The Settlement Agreement included the following provision:

**EXTENSION OF CERTIFICATION YEAR** - The [Employer] agrees that, pursuant to Mar-Jac Poultry Co., 136 NLRB 785 (1962), the certification year in Case 14-RC-183775 will be extended for a period of seven months, commencing upon approval of this settlement agreement. During this seven month period, the [Employer] agrees to bargain in good faith with the [Union] for an initial collective-bargaining agreement and acknowledges that the Board will dismiss any representation petitions concerning this bargaining unit filed through the end of the extended certification year.

Based on the foregoing, the seven-month extension of the certification period is effective as of March 25, 2019. The Board has long held that "...the certification year will be extended 'to embrace that time in which the employer has engaged in its unlawful refusal to bargain.'" *Mammoth of California*, 253 NLRB 1168, 1169 (1981), citing *Pride Refining, Inc.*, 224 NLRB 1353, 1354-1355 (1976). The Employer's conduct subject to the settlement agreement noted above commenced on or about March 7, 2018. The instant petition, filed on August 31, 2018, was filed during the extended certification that "embrace[s] that time in which the employer has engaged in its unlawful refusal to bargain," and, by operation of law, must be dismissed.

Because the petition was filed during the extended certification year, I am dismissing the petition.

**Right to Request Review:** Pursuant to Section 102.67 of the National Labor Relations Board's Rules and Regulations, you may obtain a review of this action by filing a request with the Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570-0001. The request for review must contain a complete statement of the facts and reasons on which it is based.

**Procedures for Filing Request for Review:** A request for review must be received by the Executive Secretary of the Board in Washington, DC, by close of business (5 p.m. Eastern Time) on April 15, 2019, unless filed electronically. If filed electronically, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on April 15, 2019.

Consistent with the Agency's E-Government initiative, parties are encouraged, but not required, to file a request for review electronically. Section 102.114 of the Board's Rules do not permit a request for review to be filed by facsimile transmission. A copy of the request for review must be served on each of the other parties to the proceeding, as well as on the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

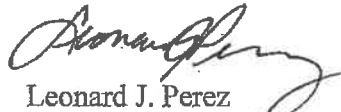
Filing a request for review electronically may be accomplished by using the Efiling system on the Agency's website at [www.nlr.gov](http://www.nlr.gov). Once the website is accessed, click on **E-File Documents**, enter the NLRB Case Number, and follow the detailed instructions. The responsibility for the receipt of the request for review rests exclusively with the sender. A failure to timely file the request for review will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other

April 1, 2019

reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Upon good cause shown, the Board may grant special permission for a longer period within which to file a request for review. A request for extension of time, which may also be filed electronically, should be submitted to the Executive Secretary in Washington, and a copy of such request for extension of time should be submitted to the Regional Director and to each of the other parties to this proceeding. A request for an extension of time must include a statement that a copy has been served on the Regional Director and on each of the other parties to this proceeding in the same manner or a faster manner as that utilized in filing the request with the Board.

Very truly yours,

  
Leonard J. Perez  
Regional Director

cc: Office of the Executive Secretary (by e-mail)

Jonathan D. Karmel, Esq.  
The Karmel Law Firm  
221 N LaSalle St Ste 1550  
Chicago, IL 60601-1224

Robert Gentry  
8515 N. Empire Drive  
Altamont, IL 62411

Joseph C. Torres, Esq.  
The Karmel Law Firm  
221 N LaSalle St Ste 1550  
Chicago, IL 60601-1224

Local 881 United Food and Commercial Workers  
10400 W Higgins Rd Ste 500  
Rosemont, IL 60018-3712

Sean Blankley, Plant Manager  
Pinnacle Foods Group, LLC and its successor  
Conagra Brands, Inc  
1000 Brewbaker Dr  
Saint Elmo, IL 62458-1234

James N. Foster, Jr., Esq.  
McMahon Berger, P.C.  
2730 North Ballas Road, Suite 200  
P.O. Box 31901  
Saint Louis, MO 63131-3039

# EXHIBIT D

**BEFORE THE  
NATIONAL LABOR RELATIONS BOARD  
REGION 13**

In the Matter of:	:	
	:	
LATINO EXPRESS, INCORPORATED	:	13-CA-077678
	:	13-CA-078126
	:	Case Nos. 13-CA-078127
	:	13-CA-079765
	:	13-CA-082141
v.	:	
	:	
TEAMSTERS LOCAL UNION NO. 777,	:	
AFFILIATED WITH THE INTERNATIONAL:	:	
BROTHERHOOD OF TEAMSTERS, AFL-CIO:	:	

The above entitled matter came on for trial pursuant to notice, before **DAVID I. GOLDMAN**, Administrative Law Judge, at National Labor Relations Board Regional Office, The Rookery Building, 209 South LaSalle Street, Courtroom 910, Chicago, Illinois, on October 9, 2012, at 9:37 a.m.

FREE STATE REPORTING, INC.  
1378 Cape St. Claire Road  
Annapolis, Maryland 21409  
(410) 974-0947

1. A P P E A R A N C E S

2 On Behalf of the Employer:

3      ZANE D. SMITH, ESQ.

4 Zane D. Smith & Associates, Ltd.

5 415 N. LaSalle Street, Suite 501

6 Chicago, Illinois 60654

7

8 On Behalf of the Intervenor:

9 MATTHEW C. MUGGERIDGE, ESQ.

10 National Right to Work Foundation

11 8001 Braddock Road, Suite 600

12 Springfield, Virginia 22160-0002

13

14 On Behalf of the General Counsel:

15 CHARLES MUHL, ESQ.

16 National Labor Relations Board

17 209 S. LaSalle Street, Suite 900

18 Chicago, Illinois 60604

19

20 On Behalf of the Union:

21 ELIZABETH GONZALEZ

22 JAMES T. GLIMCO

23 Teamsters Local 777

24 7827 Ogden Avenue

25 Lyons, IL 60534

FREE STATE REPORTING, INC.  
1378 Cape St. Claire Road  
Annapolis, Maryland 21409  
(410) 974-0947

1 (Whereupon a lunch recess was taken from 11:56 p.m. to 1:30  
2 p.m.)

3 ADMIN. LAW JUDGE GOLDMAN: Okay, we're back on the  
4 record.

5 Before we broke, we heard argument on a Motion to  
6 Intervene and that's what's at issue now. It was filed  
7 pursuant to 102.29 of the Board's Rules and Regulations by  
8 an attorney on behalf of now at this moment 37 bargaining  
9 unit employees that he represents.

10 I do note as referenced by the General Counsel that  
11 this motion was filed only yesterday, a federal holiday  
12 with the hearing set to start this morning. It was  
13 received by me, at least by me today.

14 The delay is not helpful but I think I'm prepared to  
15 rule having had a chance during the lunch recess to review  
16 it and the authorities, but such a short time frame does  
17 put the parties in a position of arguing now or asking for  
18 a delay in the hearing which they probably don't want but I  
19 am prepared to rule, but I don't understand why the motion  
20 could not have been filed in advance of the hearing which  
21 has been set for some time. There's no rationale for that  
22 timing set forth in the motion.

23 According to the motion which was supplemented by oral  
24 argument or discussion, the employees want to intervene to  
25 protect their interests, particularly the prospect of the

1 implementation of a remedy sought by the General Counsel in  
2 this case to have the Union continue as the bargaining  
3 representative of the employees which is part of the remedy  
4 sought. Concretely, the intervenors seek according to the  
5 motion to -- this proceeding and present evidence and I  
6 presume argument about and I'll just quote it. A, their  
7 experiences with the teamsters and it's representatives in  
8 the time before they expressed their disaffection from the  
9 Union with a petition. B, the reasons for their  
10 disaffection and C, their legally protected choice to work  
11 in a Union free workplace. That's on page nine of the  
12 motion to intervene.

13 I deny the motion. This is an unfair labor practice  
14 case. It's not a representation case. The employees  
15 selected a collective bargaining representation and it's  
16 choice was certified by the Board on April 18, 2011,  
17 according to the pleadings. And the circumstances of that  
18 choice are not before me, and that choice and certification  
19 are not at issue here and they won't be at issue here.

20 What is at issue here is the allegations that after the  
21 certification of the Union, the Employer engaged in a  
22 course of bad faith bargaining and made a unilateral  
23 change. Also, at issue is the Employer's unilateral  
24 withdrawal of recognition from the Union on April 24, 2012.

25 Now, the Employer withdrew recognition based on

1 employee petition that appears to be signed by many of the  
2 employees. I've seen it because it's attached to the  
3 answer. Under the Board's -- case, when an Employer  
4 unilaterally withdraws recognition, it does so based on the  
5 evidence it has at the time of control and acts in it's  
6 peril that the evidence is valid and that the context does  
7 not involve it's own unfair labor practices.

8 If the Employer bargaining in bad faith is alleged, the  
9 General Counsel's contention would be that as a matter of  
10 precedent and as a matter of law that the Employer cannot  
11 rely on the petition to unilaterally withdraw recognition.

12 Certainly, intervenors do not need to be present or  
13 participate to argue or maybe I should say that employees  
14 don't need to intervene to argue that the company did or  
15 didn't bargain in good faith and Counsel for the  
16 intervenors admits that as I think he must.

17 Nor do employees need to be present to argue that if  
18 the Employer bargained in bad faith or committed the other  
19 unfair labor practices alleged that there should still be  
20 no duty to bargain. That is very much the Employer's  
21 interest to argue such a thing and the Employer can and/or  
22 will and I presume will argue it's case forcefully.

23 What is not at issue directly in this proceeding is  
24 whether or not the employees subjectively want a Union.  
25 The issue is whether the Employer bargained in bad faith,

1 made unilateral changes or unlawfully withdrew recognition  
2 from the Union. We will not be receiving testimony from  
3 any side from employees saying why they do want a Union or  
4 why they do not want a Union. There may be testimony about  
5 employee action and conduct, but those are not separate  
6 legal interests that need protecting. Thus, the employees  
7 subjective desire to have a Union or to not have a Union is  
8 not at issue in this case.

9 The employees interest in having or not having a Union  
10 is available to be vindicated and it's vindicated through  
11 the Board's representation case procedures. The employees  
12 understand to file the decertification petition with the  
13 Board but the Employer's alleged unfair labor practices  
14 have gotten away with that, again the employees as  
15 intervenors have nothing to add to that. The intervenor in  
16 the motion and in earlier discussion explain that the Board  
17 processes for decertification election are flawed because  
18 of this rule that's the Board's blocking rule and does seem  
19 to be -- but the blocking rule is not part of this case.  
20 The original representation case is not part of this case  
21 and the decertification case is not part of this case.

22 The point is the intervenors want to testify about the  
23 Union, about their reasons for their dissatisfaction. It's  
24 not relevant to this case. This case is about the  
25 Employer's misconduct and whether it precludes it from

1 allowing on the petition or if the petition was developed  
2 in some way factually that does now allow the Employer to  
3 rely on it. Those are the relevant facts. Employee  
4 testimony about the reasons for signing the petition cannot  
5 change that and I would note no party is going to be  
6 allowed to put on employee testimony about why they did or  
7 didn't like the Union or why they did or didn't sign the  
8 petition.

9 For a multitude of administrative and evidentiary  
10 reasons, we do not sit to hear the subjective recall of  
11 employees support for a Union or their dislike for a Union.  
12 That's not the procedure we use for utilizing the Board's  
13 goals of employee free choice in industrial stability.

14 Finally, the employees seek to intervene because of  
15 concern there could be a remedy that continues Union  
16 representation. Certainly, that is I believe a goal of the  
17 Union and the General Counsel in the frame work of this  
18 case, but it is a goal that turns on the unfair labor  
19 practices of the Employer, not on the employees desires at  
20 this moment in time. Remember the employees selected the  
21 Union as a representative. It exercised that choice.  
22 Stability of bargaining relationships is also a goal of  
23 that. Having been duly certified, the Union gets a shot at  
24 a lawful environment to bargain and represent the  
25 employees. If employees don't like it, they can decertify

1 the Union once the Union has been given that lawful chance  
2 to represent the employees as the employees originally  
3 sought to have a Union do. That's the balancing between  
4 free choice and industrial stability that the Board has  
5 drawn. The balance is not that employee sentiment at any  
6 moment no matter what the legal context or issues between  
7 the Employer and Union can be measured and then used to  
8 seek or unseek the Union. Employee sentiment -- from  
9 procedure or law or precedent cannot determine in this  
10 unfair labor practice hearing in which company misconduct  
11 is alleged whether the selection of Union representations  
12 that these employees chose needs to continue for a finite  
13 additional period before the employees can once again  
14 exercise their desires and if it is their desire to at that  
15 point remove the Union as bargaining representative.

16 At bottom, there may well be employees in this case who  
17 are witnesses. They are not entitled to intervene as a  
18 party in this unfair labor practice proceeding.

19 So, given all this, I deny the Motion to Intervene.  
20 Thank you. Are we ready for opening statements?

21 MR. MUHL: Two other preliminary matters. Just, Judge,  
22 this is an administrative error on my part in discussing  
23 Respondent's answer and the two different allegations that  
24 ultimately were admitted, I took a closer look at the  
25 formal papers and realized that the answer is not actually